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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/500,821	11/05/2004	Hanns-Peter Muller	CS8248/LeA 35,595	8283
34469	7590	05/15/2006	EXAMINER	
BAYER CROPSCIENCE LP			GEORGE, KONATA M	
Patent Department			ART UNIT	
100 BAYER ROAD			PAPER NUMBER	
PITTSBURGH, PA 15205-9741			1616	

DATE MAILED: 05/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/500,821	Applicant(s) MULLER ET AL.	
	Examiner Konata M. George	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-16 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 9-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/72004</u> . | 6) <input type="checkbox"/> Other: ____. |

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DETAILED ACTION

Claims 9-16 are pending in this application.

Information Disclosure Statement

1. The information disclosure statement (IDS) submitted on July 7, 2004 was noted and the submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the examiner has considered the information disclosure statement.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
2. Claims 9-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Botts et al. (WO 99/00013).

Applicants claim a powder formulation having a particle diameter of under 125 microns consisting of one or more agrochemical active compounds, one or more hydroxy-containing polyester and optionally a biodegradable polymer and optionally one or more additives. Additionally claimed are preferred polyesters and agrochemical active agents and a method of producing the formulation.

Determination of the scope and content of the prior art
(MPEP §2141.01)

Botts et al. teach microparticles containing agricultural active ingredients entrapped in polymeric matrixes to form microparticles having a diameter range from about 0.2 to about 200 microns and that the formulation is applied to soil, seeds, plants, etc. (abstract). The microparticles comprises about 1 to about 50% by weight of the active agent and about 50 to about 99% by weight of the polymer matrix (page 2, lines 14-19). Page 3, lines 7-23 discloses examples of the polymer of which polyesters are mentioned. Page 13, lines 5-16 teach examples of the active ingredient of which the insecticide imidacloprid is mentioned. Page 16, lines 17-27 teach that inactive ingredients such as solvents, dispersant, adjuvants, etc. can be included in the formulation. Page 17, lines 8-28 teach a method of producing the particles by producing an oil phase, a water phase, and mixing the two phases to form an emulsion by stirring, homogenization or sonication, then the emulsion is stirred until the organic

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solvent has evaporated, then isolating the microparticles by washing, filtering and drying the microparticles in air.

Ascertainment of the difference between the prior art and the claims

(MPEP §2141.02)

The prior art does not teach the specific polyester as claimed or the temperature of the homogenization process.

Finding of prima facie obviousness

Rational and Motivation (MPEP §2142-2143)

It is the position of the examiner that since the prior art discloses the use of a polyester in a broad sense, then the specific polyester would fall within the scope of the invention. It would have been obvious to one of ordinary skill in the art at the time the invention was made through routine experimentation to determine the appropriate homogenization temperature to achieve the desired powder formulation of the claimed invention. This is in the absence of any clear showing of unexpected results attributable to the specific polyester claimed by applicant or the specific homogenization temperature employed by applicant in the instant case.

Conclusion

3. Claims 9-16 stand rejected.

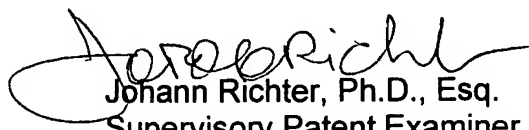
Telephone Inquiries

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Konata M. George, whose telephone number is 571-272-0613. The examiner can normally be reached from 8AM to 6:30PM Monday to Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter, can be reached at 571-272-0646. The fax phone numbers for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have question on access to the Private Pair system, contact the Electronic Business Center (EBC) as 866-217-9197 (toll-free).

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